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Nth Connect Telecom, Inc. and Steven Chen

UNITED STATES DISTRICT COURT
CALIFORNIA NORTHERN DISTRICT (SAN JOSE)

VLADIMIR A. BALAREZO, individually and on behalf of others similarly situated)	Case No. C 07 05243 JF (PVT)
)	
Plaintiff,)	DEFENDANTS' CASE MANAGEMENT
)	STATEMENT
vs.)	
)	
NTH CONNECT TELECOM INC., and)	
STEVEN CHEN,)	
)	
Defendants.)	
_____)	

In accordance with the Standing Order for All Judges of the Northern District of California, defendants in this matter hereby submit this Case Management Conference Statement, due to plaintiff's submission of an individual statement without consulting defendants.

1. Jurisdiction and Service

The basis for the Court's subject matter jurisdiction over the claims of Plaintiff Vladimir A. Balarezo (hereinafter "Plaintiff") is the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., as alleged in the Complaint. There are no existing issues regarding personal jurisdiction or venue. There are no parties that remain to be served.

2. Facts

Plaintiff was employed by defendant Nth Connect Telecom, Inc. as a technician to install satellite equipment. Defendant Steven Chen is the CEO of Nth Connect. In this action, Plaintiff

1 seeks compensation for overtime and other wage and hour claims against Defendants under Federal
2 and California law, and also seeks class certification.

3 The principal factual issues in dispute are:

4 1. Whether and to what extent Plaintiff and the class he seeks to represent were
5 not paid overtime to which they are entitled;

6 2. Whether and to what extent Plaintiff and the class he seeks to represent had
7 not been provided with meal breaks as required by law.

8 3. Whether Plaintiff's claim is suitable for a class action certification.

9 4. Whether Plaintiff is suitable as a class representative.

10 **3. Legal Issues**

11 Plaintiff has filed this action as a class action under Rule 23 of the Federal Rules of Civil
12 Procedure. Plaintiff also seeks treatment of opt-in class action under 29 U.S.C. § 216(b). In his
13 substantive allegations, Plaintiff asserts that Defendants failed to pay Plaintiff and a class of
14 employees overtime pay in violation of California Labor Code §§ 501 and 1194 as well as in
15 violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. Plaintiff further alleges that
16 Defendants failed to pay Plaintiff and the putative class members their wages upon termination in
17 violation of California Labor Code § 201. Finally, Plaintiff seeks restitution of overtime wages in
18 accordance with California Business & Professions Code § 17200.

19 Defendants dispute that Plaintiff was improperly compensated, and instead assert that at all times
20 they paid plaintiff properly under the law. Defendants also dispute both whether plaintiff is an
21 adequate representative for the putative class and whether a class action can be certified.

22 **4. Motions**

23 The parties anticipate the filing of the following motions:

24 (a) Plaintiffs' Motion for Class Certification under FLSA and Fed. R. Civ. P. 23;

25 (b) Plaintiff's Partial Summary Judgment Motion for Class Liability;

26 (c) Defendants' Motions for Partial Summary Judgment and/or Summary Judgment.

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1 **5. Amendment of Pleadings**

2 Plaintiff has sent a letter to California Labor and Workforce Development Agency requesting
3 clearance to sue under California Labor Code Private Attorney General's Act ("PAGA") to seek civil
4 penalties on behalf all current and former employees.

5 **6. Evidence Preservation**

6 Defendants have previously notified opposing counsel of the obligation to preserve all
7 electronically stored evidence and will take steps to do so.

8 **7. Disclosures**

9 The parties have agreed to serve their respective initial disclosures no later than March 7,
10 2008.

11 **8. Discovery**

12 The parties previously agreed to adhere to the following discovery and case management
13 schedule:

- 14 (a) Deadline to complete fact discovery: February 28, 2009.
- 15 (b) Deadline for Plaintiff to file motions for class certification: November 30, 2008.
- 16 (c) Deadline for expert disclosure statements under Fed. R. Civ. P. 26: March 31, 2009.
- 17 (d) Deadline to conduct expert discovery: April 30, 2009.
- 18 (e) Last day for hearing dispositive motions to be filed: June 19, 2009.

19 The parties wish to reserve the ability to seek an acceleration (or an extension) of the
20 above-proposed schedule.

21 **9. Class Action**

22 Plaintiff previously provided the following statement in compliance with Local Rule 16-9(b).

23 (1) The class action for claims under California law is maintained under Fed. R. Civ. P.
24 23(a)(1), 23(a)(2), 23(a)(3), 23(a)(4), 23(b)(3). This class action insofar as claims under the FLSA
25 are asserted is maintainable under 29 U.S.C. § 216(b), as distinct from Fed. R. Civ. P. 23.

26 (2) Plaintiff proposes two separate classes:

27 a) FLSA claims: All non-exempt installation technicians: I) who worked for
28 defendant commencing at any time since three years before the filing of this action; (the "FLSA

1 Class").

2 b) California claims: All installation technicians who: I) worked for defendant
3 in California commencing at any time since four years before the filing of this action; (the
4 "California Class"). A sub-class of California Class consists of all installation technicians whose
5 employment with defendant terminated at any time in three years before the filing of this case
6 (California § 203 Class).

7 Depending upon further investigation and the results of discovery, Plaintiff may seek to
8 modify these class definitions. Moreover, further discovery may justify elaboration on the form of
9 Defendants' failure to provide employee benefits such that added classes are appropriate.

10 (3) Plaintiff is a member of the Federal Class, and also a member of the California Class
11 and, like other members, was not paid overtime pay and was not provided required meal breaks in
12 violation of the FLSA and California labor law. While Plaintiff is unable to state the exact number
13 of either class without access to records within Defendants' possession, Plaintiff believes and
14 Defendants had presented that the California Class and the Federal Class exceed 100 members.
15 Plaintiff alleges that common questions of law and fact predominate in this case. For example, the
16 class members' rights insofar as this action is concerned arise from the Defendants' uniform payroll
17 practice of paying straight time only, applicable to all non-exempt installation technicians. In light
18 of the commonality of the sources of the putative class members' rights, individual adjudications
19 harbor the possibility of inconsistent adjudications. Plaintiff has no conflicts of interest and will
20 fairly and adequately represent both classes. Plaintiff is not aware of any other pending litigation
21 concerning the claims asserted herein nor of any difficulties that should be encountered in the
22 management of this litigation as a class action.

23 (4) Plaintiff plans to file motions for the Court to consider class certification no later than
24 November 30, 2008, though Plaintiff may file such motions sooner.

25 **10. Related Cases**

26 There are no related cases or proceedings pending before another Judge of this Court or
27 before another Court or administrative body.

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11. Relief

At this point, Plaintiff does not have sufficient record to estimate the damages.

12. Settlement and ADR

The parties have already completed a Mediation. Defendants are amenable to further proceedings as recommended by the Court.

13. Consent To Magistrate Judge For All Purposes

Neither party is willing to consent to have a Magistrate Judge to conduct all further proceedings in this matter.

14. Other References

The parties agree that this case is not suitable for reference to binding arbitration or any other reference.

15. Narrowing Of Issues

Plaintiff does not expect the parties to be able to narrow the issues. However, the issues in this case may be narrowed by motions related to the class action process.

16. Expedited Schedule

The parties do not believe that this is the type of case that can be handled on an expedited basis with streamlined procedures.

17. Trial

Both parties have requested a jury trial. The expected length of trial is 15 court days.

18. Disclosure of Non-Party Interested Entities or Persons

Plaintiff has no one to disclose other than parties themselves.

19. Other Matters

None.

Dated: August 12, 2008

Friedman, Enriquez & Carlson, LLP

By: _____ / s /
Grant Carlson
Attorney for Defendants